

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of : Gary W. Flake, et al.
Serial No. : 10/625,000
Filed : July 22, 2003
Group Art Unit : 3609
Examiner : KARDOS, Neil R.
Title : CONCEPT VALUATION IN A TERM-BASED CONCEPT
MARKET

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

AMENDMENT

Sir:

In response to the Notice of Non-Compliant Amendment dated November 16, 2007 in connection with the above-referenced patent application, Applicants have provided the proper status identifier for Claim 13 in compliance with 37 CFR 1.121. Reconsideration of the application is respectfully requested in view of the following revisions.

Amendments to the claims begin on page 2; and

Remarks begin on page 5 of this paper.

AMENDMENTS TO THE CLAIMS

The listing of claims will replace all prior versions, and listings, of claims in the application:

1. (Currently Amended) In a computerized system for allowing transactions in instruments, the instruments being capable of being valued based on values of term-based concepts, and terms of the concepts being useable in computerized searches, a method for valuing a concept comprising a set of one or more terms, the method comprising:

obtaining quantitative data associated with at least one of the concept and one or more of the terms of the term set;

operating on the data to produce a quantitative statistic; and

determining a value of the concept based at least in part on the produced statistic such that the value is used in the computerized system allowing transactions in the instruments.

2. (Original) The method of claim 1, comprising obtaining quantitative data associated with at least one of demand for the concept and demand for one or more of the terms of the term set.

3. (Original) The method of claim 1, comprising obtaining quantitative data associated with at least one of demand for the concept for use in advertising and demand for one or more of the terms of the term set for use in advertising.

4. (Original) The method of claim 3, comprising measuring the demand for use in advertising based on one or more amounts paid for use in advertising.

5. (Original) The method of claim 4, comprising measuring the demand for use in advertising based on one or more amounts paid for use in advertising, wherein the use in advertising comprises obtaining one or more rights to have an advertisement included in results from one or more computerized searches using at least one of the terms of the term set.

6. (Original) The method of claim 1, comprising operating on the data by using the data in at least one mathematical formula.

7. (Original) The method of claim 6, comprising collecting quantitative data relating to one or more Pay-Per-Click auctions.

8. (Original) The method of claim 7, comprising operating on the data by using at least one of a total revenue per period calculation, a median revenue per period calculation, an average revenue per period calculation, an average of median bid price calculation, and a median of median clicked price calculation, and a median click calculation.

9. (Original) The method of claim 8, comprising taking at least one measure to prevent intentional manipulation of the value of the concept.

10. (Original) The method of claim 8, comprising taking at least one measure to maintain liquidity.

11. (Original) The method of claim 8, comprising operating on the data by using a median click calculation, and comprising omitting from the median click calculation one or more highest and lowest price quantities.

12. (Currently Amended) The method of claim 11, comprising omitting from the median click calculation the same number of highest price quantities as lowest price quantities.

13. (Currently Amended) In a computerized system for allowing transactions in instruments, the instruments being capable of being valued based on values of term-based concepts, and terms of the concepts being useable in computerized searches, a method for valuing a concept comprising a set of one or more terms, the method comprising:

obtaining quantitative data associated with at least one of demand for the concept and demand for one or more of the terms of the term set;

operating on the data to produce a quantitative statistic; and

determining a value of the concept based at least in part on the produced statistic, comprising taking at least one measure to prevent intentional manipulation of the value of the concept such that the value is used in the computerized system allowing transactions in the instruments.

14. (Original) The method of claim 13, comprising using a median click calculation in determining the statistic, and comprising omitting from the median click calculation one or more highest and lowest price quantities.

REMARKS

This is in response to the Office Action dated September 7, 2007, in which the Examiner rejects all pending claims 1-14. For at least the reasons set forth herein, Applicants assert the claims are allowable.

Claims 1 and 13 have been amended to further recite limitations previously found within the preamble. Claim 12 has been amended to indicate that the claimed “quantities” are “price quantities,” not adding any new matter beyond the specification as originally filed, but rather correcting an antecedent basis issue relative to claim 11. Furthermore, this thus overcomes the Examiner-noted objection to claim 12 by correcting this informality.

Claims 11, 12 and 14 stand rejected under 35 U.S.C. §112, ¶2 as being indefinite based on the term “omitting.” Applicants respectfully disagree. Claims 11, 12 and 14 recite and depend from claims that recite “comprising.” It is well recognized and settled that the term “comprising” is given an open and non-limiting interpretation, as contrasted with the usage of the term “consisting”. The Examiner asserts the indefiniteness is based on the exclusion of a previous limitation directing a specific relationship between the median click calculation and the highest and lowest price quantities, to which Applicants respectfully disagree. Rather, because Applicants use the term “comprising” it is proper to recite the omission limitation of the price quantities without having to first define the relationship relative to the median click calculation. The Examiner’s states that the “claims do not necessitate including a price median click calculation.” To which Applicants submit reciting the omission step under “comprising”

is consistent with how claims are properly interpreted, and hence the rejection under 35 U.S.C. §112, ¶2 is improper.

Claims 1-9 and 13 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,269,361 (“Davis.”) Applicants respectfully disagree and submit the rejection is improper because Davis fails to identically disclose all of the claimed limitations.

As understood, Davis discloses a system and method for influencing the position of results in a search results list. Davis includes an extensive disclosure on the manners in which sponsored search activities may be conducted and manners in which an administrator may set parameters to influence search results and result placements, specifically sequencing search results based on costs or revenue to be generated from embedding sponsored links within the search results.

By contrast, claims 1 and 13 recite a method for valuing a concept that includes, *inter alia*, “determining a value of the concept based at least in part on the produced statistic.” Moreover, the claimed value can be used in the computerized system allowing transactions in the instruments.

In support of the present rejection, the Examiner cites to col. 21, lines 8-14. Applicants respectfully traverse and disagree because col. 21, lines 8-14 merely describes the general concept of a “cost of a search listing” which is calculated by a bid amount relative to the total number of received clicks relative to a defined period of time.

Calculating how much money can be generated from a particular search result is **not** consistent with the claimed “determining a value of the concept based at least in part on the produced statistics” where “the value is used in the computerized

system allowing transactions in the instruments.” First off, Davis does not calculate a value of the concept but rather determines how much money the current click pricing scheme generates. Moreover, this generated amount calculated by Davis merely indicates how much revenue can be generated and hence Davis is silent regarding this value being used in a computerized system allowing for transactions in the instruments as claimed.

Therefore, as to claims 1 and 13, Applicants submit that the rejection is improper. As to claims 2-9, these claims depend from claim 1 and recite further patentable subject matter therefrom. Claims 2-9 are allowable for at least the same reasons as to claim 1 noted above.

Claims 10-12 and 14 stand rejected under 35 U.S.C. §103(a). The claims depend from claims 1 and 13, respectively, and recite further patentable subject matter therefrom. Claims 10-12 and 14 are allowable for at least the same reasons as to claims 1 and 13 noted above.

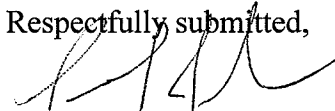
Claims 1-3, 6 and 7 stand rejected based on a nonstatutory double patenting rejection in view of copending U.S. Patent Application 10/625,082. In response thereto, Applicants submit herewith a Terminal Disclaimer, overcoming this rejection.

For at least all of the above reasons, Applicants respectfully request that the Examiner withdraw all rejections and objections, and allowance of all the pending claims is respectfully solicited. To expedite prosecution of this application to allowance, the Examiner is invited to call the Applicants' undersigned representative to discuss any issues relating to this application.

Dated: December 3, 2007

THIS CORRESPONDENCE IS BEING
SUBMITTED ELECTRONICALLY THROUGH
THE PATENT AND TRADEMARK OFFICE EFS
FILING SYSTEM ON December 3, 2007.

Respectfully submitted,



Timothy J. Bechen
Reg. No. 48,126
DREIER LLP
499 Park Avenue
New York, New York 10022
Tel : (212) 652-3734
Fax: (212) 600-9499

Customer Number: 61834